IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition Nol545 of 2002

State of Mah and ors .. petitioners

vs

Shri P P Gawade .. respondent

Mr N P Deshpande AGP for petitioners

None for respondents

CORAM: V.G.PALSHIKAR &

V.R.KINGAOKAR JJ.

DATED 20.3.2006

P.C.

. By this petition, the petitioners have challenged the order passed by the Maharashtra Administrative Tribunal dated 27.ll.2000 allowing the original application no 634 of 2000 filed by the respondent-employee of the Police Department holding that the enquiry cannot be conducted by the officers belonging to the Police Department itself. The tribunal did not, while recording the said finding, consider the application on merits pertaining to particular charges levelled against the departmental candidate. The question is as to whether such enquiry is to be conducted or not as considered in judgment in the

case of State of Maharashtra and anr vs Dilip Anant Surve (2005 (3) Ma L J l998). It has been clearly laid down by this court that exercise of power under Articles l62 and 309 is distinct and for the purpose of making rules under Article 309, power under Article l62 is to be exercised. It was, therefore, held that the lower to hold departmental inquiry flows from the power to take disciplinary action. That being the position, the Maharashtra Administrative Tribunal was obviously wrong in allowing the application and setting aside the departmental enquiry. As a result, this writ petition has to be allowed and the order impugned therein is to be set aside and the matter is remanded for decision on merits.

2. Accordingly, the impugned order in this petition is set aside. The original application no.634 of 2000 is remitted back to the tribunal for adjudication in accordance with law. The tribunal shall decide the matter as early as possible and preferably within six months from the date of receipt of this order. The petition is disposed of accordingly. Rule is discharged.

(V.G.Palshikar J)

(V.R.Kingaokar J)